

Jun 30, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRANDON S.,¹

Plaintiff,

vs.

ANDREW M. SAUL,
COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

No. 4:20-cv-05089-MKD

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

ECF Nos. 24, 28

Before the Court are the parties' cross-motions for summary judgment. ECF Nos. 24, 28. The parties consented to proceed before a magistrate judge. ECF No. 9. The Court, having reviewed the administrative record and the parties' briefing,

¹ To protect the privacy of plaintiffs in social security cases, the undersigned identifies them by only their first names and the initial of their last names. *See* LCivR 5.2(c).

1 is fully informed. For the reasons discussed below, the Court denies Plaintiff's
2 motion, ECF No. 24, and grants Defendant's motion, ECF No. 28.

3 **JURISDICTION**

4 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);
5 1383(c)(3).

6 **STANDARD OF REVIEW**

7 A district court's review of a final decision of the Commissioner of Social
8 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
9 limited; the Commissioner's decision will be disturbed "only if it is not supported
10 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
11 1158 (9th Cir. 2012). "Substantial evidence" means "relevant evidence that a
12 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159
13 (quotation and citation omitted). Stated differently, substantial evidence equates to
14 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
15 citation omitted). In determining whether the standard has been satisfied, a
16 reviewing court must consider the entire record as a whole rather than searching
17 for supporting evidence in isolation. *Id.*

18 In reviewing a denial of benefits, a district court may not substitute its
19 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
20 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one

1 rational interpretation, [the court] must uphold the ALJ's findings if they are
2 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674
3 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an
4 ALJ's decision on account of an error that is harmless." *Id.* An error is harmless
5 "where it is inconsequential to the [ALJ's] ultimate nondisability determination."
6 *Id.* at 1115 (quotation and citation omitted). The party appealing the ALJ's
7 decision generally bears the burden of establishing that it was harmed. *Shinseki v.*
8 *Sanders*, 556 U.S. 396, 409-10 (2009).

9 **FIVE-STEP EVALUATION PROCESS**

10 A claimant must satisfy two conditions to be considered "disabled" within
11 the meaning of the Social Security Act. First, the claimant must be "unable to
12 engage in any substantial gainful activity by reason of any medically determinable
13 physical or mental impairment which can be expected to result in death or which
14 has lasted or can be expected to last for a continuous period of not less than twelve
15 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant's
16 impairment must be "of such severity that he is not only unable to do his previous
17 work[,] but cannot, considering his age, education, and work experience, engage in
18 any other kind of substantial gainful work which exists in the national economy."
19 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

1 The Commissioner has established a five-step sequential analysis to
2 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
3 404.1520(a)(4)(i)-(v), 416.920(a)(4)(i)-(v). At step one, the Commissioner
4 considers the claimant’s work activity. 20 C.F.R. §§ 404.1520(a)(4)(i),
5 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
6 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
7 404.1520(b), 416.920(b).

8 If the claimant is not engaged in substantial gainful activity, the analysis
9 proceeds to step two. At this step, the Commissioner considers the severity of the
10 claimant’s impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii). If the
11 claimant suffers from “any impairment or combination of impairments which
12 significantly limits [his or her] physical or mental ability to do basic work
13 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c),
14 416.920(c). If the claimant’s impairment does not satisfy this severity threshold,
15 however, the Commissioner must find that the claimant is not disabled. *Id.*

16 At step three, the Commissioner compares the claimant’s impairment to
17 severe impairments recognized by the Commissioner to be so severe as to preclude
18 a person from engaging in substantial gainful activity. 20 C.F.R. §§
19 404.1520(a)(4)(iii), 416.920(a)(4)(iii). If the impairment is as severe or more
20

1 severe than one of the enumerated impairments, the Commissioner must find the
2 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d), 416.920(d).

3 If the severity of the claimant's impairment does not meet or exceed the
4 severity of the enumerated impairments, the Commissioner must pause to assess
5 the claimant's "residual functional capacity." Residual functional capacity (RFC),
6 defined generally as the claimant's ability to perform physical and mental work
7 activities on a sustained basis despite his or her limitations, 20 C.F.R. §§
8 404.1545(a)(1), 416.945(a)(1), is relevant to both the fourth and fifth steps of the
9 analysis.

10 At step four, the Commissioner considers whether, in view of the claimant's
11 RFC, the claimant is capable of performing work that he or she has performed in
12 the past (past relevant work). 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv).
13 If the claimant is capable of performing past relevant work, the Commissioner
14 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f), 416.920(f).
15 If the claimant is incapable of performing such work, the analysis proceeds to step
16 five.

17 At step five, the Commissioner considers whether, in view of the claimant's
18 RFC, the claimant is capable of performing other work in the national economy.
19 20 C.F.R. §§ 404.1520(a)(4)(v), 416.920(a)(4)(v). In making this determination,
20 the Commissioner must also consider vocational factors such as the claimant's age,

1 education, and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),
2 416.920(a)(4)(v). If the claimant is capable of adjusting to other work, the
3 Commissioner must find that the claimant is not disabled. 20 C.F.R. §§
4 404.1520(g)(1), 416.920(g)(1). If the claimant is not capable of adjusting to other
5 work, analysis concludes with a finding that the claimant is disabled and is
6 therefore entitled to benefits. *Id.*

7 The claimant bears the burden of proof at steps one through four above.
8 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
9 step five, the burden shifts to the Commissioner to establish that 1) the claimant is
10 capable of performing other work; and 2) such work “exists in significant numbers
11 in the national economy.” 20 C.F.R. §§ 404.1560(c)(2), 416.960(c)(2); *Beltran v.*
12 *Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

13 **ALJ’S FINDINGS**

14 On May 17, 2016, Plaintiff applied both for Title II disability insurance
15 benefits and Title XVI supplemental security income benefits alleging a disability
16 onset date of March 9, 2015. Tr. 15, 94, 108, 236-50. The applications were
17 denied initially and on reconsideration. Tr. 141-56, 159-71. Plaintiff appeared
18 before an administrative law judge (ALJ) on April 16, 2019. Tr. 48-81. On May
19 21, 2019, the ALJ denied Plaintiff’s claim. Tr. 12-39.

1 At step one of the sequential evaluation process, the ALJ found Plaintiff,
2 who met the insured status requirements through December 31, 2015, has not
3 engaged in substantial gainful activity since March 9, 2015. Tr. 17. At step two,
4 the ALJ found that Plaintiff has the following severe impairments: spinal
5 impairments, bilateral carpal tunnel syndrome, diabetes, migraine headaches,
6 obesity, somatoform disorder(s), depressive disorder(s), and anxiety disorder(s).
7 *Id.*

8 At step three, the ALJ found Plaintiff does not have an impairment or
9 combination of impairments that meets or medically equals the severity of a listed
10 impairment. Tr. 18. The ALJ did not specify the exertional level Plaintiff is
11 limited to, but concluded that Plaintiff has the RFC to perform work with the
12 following limitations:

13 [Plaintiff can] lift and carry ten pounds frequently and twenty pounds
14 occasionally. He can sit for six hours in an eight-hour workday, for
15 an hour at a time. He can stand and/or walk for six hours in an eight-
16 hour workday, for an hour at a time. He cannot crawl or climb
17 ladders, ropes, or scaffolding. He can occasionally stoop, kneel,
18 crouch, crawl, and climb ramps and stairs. He can occasionally reach
19 overhead with his upper extremities bilaterally, and can frequently
20 reach in all other directions. He can frequently handle and finger
bilaterally. He cannot operate heavy machinery or have exposure to
industrial vibration or unprotected heights. He should avoid exposure
to extreme cold. He cannot work on uneven surfaces. He can
perform simple routine tasks with occasional detailed work. He can
have occasional brief contact with coworkers and the public. He
would work best independently.

Tr. 20.

1 At step four, the ALJ found Plaintiff is unable to perform any of his past
2 relevant work. Tr. 30. At step five, the ALJ found that, considering Plaintiff's
3 age, education, work experience, RFC, and testimony from the vocational expert,
4 there were jobs that existed in significant numbers in the national economy that
5 Plaintiff could perform, such as peeled potato inspector, photocopy machine
6 operator, and toy assembler. Tr. 31. Therefore, the ALJ concluded Plaintiff was
7 not under a disability, as defined in the Social Security Act, from the alleged onset
8 date of March 9, 2015, through the date of the decision. *Id.*

9 On April 10, 2020, the Appeals Council denied review of the ALJ's
10 decision, Tr. 1-6, making the ALJ's decision the Commissioner's final decision for
11 purposes of judicial review. *See* 42 U.S.C. § 1383(c)(3).

12 ISSUES

13 Plaintiff seeks judicial review of the Commissioner's final decision denying
14 him disability insurance benefits under Title II and supplemental security income
15 benefits under Title XVI of the Social Security Act. Plaintiff raises the following
16 issues for review:

- 17 1. Whether the ALJ properly evaluated Plaintiff's symptom claims; and
- 18 2. Whether the ALJ properly incorporated Plaintiff's limitations into the
19 RFC.

20 ECF No. 24 at 3.

DISCUSSION

A. Plaintiff's Symptom Claims

Plaintiff faults the ALJ for failing to rely on reasons that were clear and convincing in discrediting his symptom claims. ECF No. 24 at 6-10. An ALJ engages in a two-step analysis to determine whether to discount a claimant's testimony regarding subjective symptoms. SSR 16-3p, 2016 WL 1119029, at *2. "First, the ALJ must determine whether there is objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged." *Molina*, 674 F.3d at 1112 (quotation marks omitted).

"The claimant is not required to show that [the claimant's] impairment could reasonably be expected to cause the severity of the symptom [the claimant] has alleged; [the claimant] need only show that it could reasonably have caused some degree of the symptom." *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009).

Second, "[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant's testimony about the severity of the symptoms if [the ALJ] gives 'specific, clear and convincing reasons' for the rejection." *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations omitted). General findings are insufficient; rather, the ALJ must identify what symptom claims are being discounted and what evidence undermines these claims. *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995); *Thomas v.*

1 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
2 explain why it discounted claimant’s symptom claims)). “The clear and
3 convincing [evidence] standard is the most demanding required in Social Security
4 cases.” *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v.*
5 *Comm’r of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

6 Factors to be considered in evaluating the intensity, persistence, and limiting
7 effects of a claimant’s symptoms include: 1) daily activities; 2) the location,
8 duration, frequency, and intensity of pain or other symptoms; 3) factors that
9 precipitate and aggravate the symptoms; 4) the type, dosage, effectiveness, and
10 side effects of any medication an individual takes or has taken to alleviate pain or
11 other symptoms; 5) treatment, other than medication, an individual receives or has
12 received for relief of pain or other symptoms; 6) any measures other than treatment
13 an individual uses or has used to relieve pain or other symptoms; and 7) any other
14 factors concerning an individual’s functional limitations and restrictions due to
15 pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §§
16 404.1529(c), 416.929(c). The ALJ is instructed to “consider all of the evidence in
17 an individual’s record,” to “determine how symptoms limit ability to perform
18 work-related activities.” SSR 16-3p, 2016 WL 1119029, at *2.

19 The ALJ found that Plaintiff’s medically determinable impairments could
20 reasonably be expected to cause some of the alleged symptoms, but that Plaintiff’s

1 statements concerning the intensity, persistence, and limiting effects of his
2 symptoms were not entirely consistent with the evidence. Tr. 21.

3 *1. Inconsistent Objective Evidence*

4 The ALJ found Plaintiff's symptom claims were inconsistent with the
5 objective medical evidence. Tr. 21-24. An ALJ may not discredit a claimant's
6 symptom testimony and deny benefits solely because the degree of the symptoms
7 alleged is not supported by objective medical evidence. *Rollins v. Massanari*, 261
8 F.3d 853, 857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir.
9 1991); *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989); *Burch v. Barnhart*, 400
10 F.3d 676, 680 (9th Cir. 2005). However, the objective medical evidence is a
11 relevant factor, along with the medical source's information about the claimant's
12 pain or other symptoms, in determining the severity of a claimant's symptoms and
13 their disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §§ 404.1529(c)(2),
14 416.929(c)(2).

15 First, the ALJ found Plaintiff's spinal and upper extremity impairments were
16 not as severe as claimed. Tr. 21-22. Plaintiff's 2014 and 2015 MRIs showed
17 abnormalities, including cervical spine spondylosis resulting in foraminal stenosis
18 and nerve root impingement. Tr. 21. (citing Tr. 380-83, 786). Plaintiff's 2014
19 nerve conduction study demonstrated mild bilateral carpal tunnel syndrome and
20 cervical radiculopathy. Tr. 21 (citing Tr. 384-90). However, Plaintiff continued

1 working through April 2015. Tr. 21. Plaintiff underwent a cervical spine fusion in
2 November 2015, *id.* (citing Tr. 716), he reported significant improvement in his
3 upper extremity symptoms in December 2015, and he demonstrated excellent
4 upper body strength and no focal neurological deficits, Tr. 21 (citing Tr. 598-600).

5 While Plaintiff had some ongoing limitations after the surgery, he had many
6 normal findings on examination and limited treatment for his pain. Tr. 22.

7 Plaintiff's 2016 MRI showed no significant issues, and Plaintiff's provider noted
8 in May 2016 that his fusion was "quite stable." Tr. 21 (citing Tr. 648, 650).

9 Plaintiff began having diminished sensation in his upper extremities again in 2016,
10 but continued to have normal strength, mostly intact range of motion, and Plaintiff
11 reported most of his pain had resolved. Tr. 22 (citing Tr. 485-86, 490, 494, 766-

12 68). Plaintiff reported not taking his prescribed pain medication for several
13 months, declined more physical therapy in 2016, and a nerve conduction study
14 demonstrated only mild carpal tunnel and no radiculopathy. Tr. 22 (citing Tr. 889-
15 90, 902, 913-15, 1358-59). From 2016 through 2019, although Plaintiff

16 occasionally had abnormal findings such as mildly decreased grip strength and
17 limited range of motion, he generally demonstrated full strength in his upper
18 extremities, intact upper extremity sensation, negative straight leg raises, negative
19 Romberg signs, no neurological deficits, and normal range of motion, strength, and
20 sensation. Tr. 21-23 (citing Tr. 497, 499, 503, 507, 994-1003, 1005, 1009, 1020-

1 25, 1056-67, 1091-94, 1171-73, 1177, 1198, 1476-96). The ALJ also noted
2 inconsistencies in Plaintiff's presentation, including multiple positive Waddell
3 signs at a workers' compensation examination. Tr. 22 (citing Tr. 994-1003).
4 Imaging in 2018 showed only mild degeneration of the lumbar spine, and an intact
5 cervical fusion. Tr. 23 (citing Tr. 1068-70).

6 Next, the ALJ found Plaintiff's headaches were not as severe as alleged. Tr.
7 23-24. While Plaintiff alleged he began having limitations due to his headaches in
8 2015, Plaintiff did not seek treatment for his headaches until late 2016. Tr. 23.
9 Plaintiff reported his diabetes contributed to his headaches, but his diabetes was
10 generally noted as well-controlled without complication. *Id.* (citing Tr. 594-96).
11 Plaintiff reported medication adequately controlled his headaches. Tr. 24 (citing
12 Tr. 1155). Despite Plaintiff's report that he needs to take at least two naps per day
13 due to headaches, Tr. 305, ALJ noted there is no documentation of Plaintiff having
14 an active headache at any appointments, Tr. 24. At multiple appointments,
15 Plaintiff did not report headaches. Tr. 23-24 (citing Tr. 883, 1119, 1143, 63).

16 Lastly, the ALJ found Plaintiff's psychological symptoms were not as severe
17 as alleged. Tr. 24-25. Plaintiff generally had normal thoughts, judgment, memory,
18 and cognition. Tr. 24 (citing, e.g., Tr. 682-83, 685, 699, 720, 728, 913, 1034-37).
19 Plaintiff generally denied anxiety and depression, and the Beck Depression
20 Inventory and Beck Anxiety Inventory indicated insignificant levels of depression

1 and anxiety. Tr. 1017, 1023, 1035, 1082. The ALJ found multiple providers
2 encouraged Plaintiff to seek vocational counseling, which indicated Plaintiff is
3 capable of working, with assistance identifying new employment prospects. Tr.
4 24. Despite his allegations of significant mental health symptoms, Plaintiff
5 reported an ongoing lack of mental health care until March 2019, and he declined
6 psychiatric medication. Tr. 25 (citing Tr. 1196, 1499-1517).

7 Plaintiff contends the objective medical evidence is consistent with his
8 allegations, specifically his allegation that he needs to take a 10-minute break
9 every hour. ECF No. 24 at 6-10. However, the ALJ set forth a thorough analysis
10 of the objective evidence, which demonstrates that despite some abnormalities,
11 Plaintiff often had generally normal physical and psychological examination
12 findings, and imaging and nerve conduction testing that show no more than
13 moderate findings. On this record, the ALJ reasonably concluded that the
14 objective medical evidence is inconsistent with Plaintiff's symptom allegations.
15 This finding is supported by substantial evidence and was a clear and convincing
16 reason, along with the other reason offered, to discount Plaintiff's symptom
17 complaints.

18 *2. Activities of Daily Living*

19 The ALJ found Plaintiff's activities of daily living were inconsistent with his
20 symptom claims. Tr. 21, 25. The ALJ may consider a claimant's activities that

1 undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a
2 substantial part of the day engaged in pursuits involving the performance of
3 exertional or non-exertional functions, the ALJ may find these activities
4 inconsistent with the reported disabling symptoms. *Fair*, 885 F.2d at 603; *Molina*,
5 674 F.3d at 1113. “While a claimant need not vegetate in a dark room in order to
6 be eligible for benefits, the ALJ may discount a claimant’s symptom claims when
7 the claimant reports participation in everyday activities indicating capacities that
8 are transferable to a work setting” or when activities “contradict claims of a totally
9 debilitating impairment.” *Molina*, 674 F.3d at 1112-13.

10 The ALJ found Plaintiff’s allegations of disabling limitations were
11 inconsistent with his activities of daily living. Tr. 21, 25. While Plaintiff reported
12 many of his limitations stem from an April 2014 injury, Plaintiff continued to work
13 until April 2015. Tr. 21 (citing Tr. 284-300). In January 2015, Plaintiff was
14 working light duty and studying engineering in college. Tr. 21. However, by May
15 2015, Plaintiff had ceased his work and his engineering studies. Tr. 21 (citing Tr.
16 577-78). In 2017, Plaintiff reported learning to program computers and reported
17 he was able to handle his own laundry, housecleaning, and meal preparation, and
18 he spent much of his time at a computer. Tr. 25 (citing Tr. 1040). In 2018,
19 Plaintiff reported losing fifteen pounds due to a recent increase in his physical
20 activities, which included walking up to five miles at a time. Tr. 25 (citing Tr.

1 1201). In 2019, Plaintiff reported mowing the lawn with a self-propelled lawn
2 mower, weeding, walking his dog up to four miles on good days, and he testified
3 he spent up to five hours per day on a computer. Tr. 25, 1482, 1501. Plaintiff also
4 reported being able to manage money, watch television every day, play video
5 games five times per week, and he reported no issues with sitting, understanding,
6 following instructions, or getting along with others. Tr. 306-09. Plaintiff reported
7 in 2019 that he could sit for 90 minutes, stand for 20-30 minutes, walk for 20
8 minutes, and lift/carry 20 pounds. Tr. 1482. Plaintiff argues his ability to attend
9 school and work for a period of time is not inconsistent with his allegations, ECF
10 No. 24 at 8-9, however Plaintiff does not address the additional activities identified
11 by the ALJ as inconsistent. On this record, the ALJ reasonably concluded that the
12 totality of Plaintiff's activities is inconsistent with his symptom allegations. This
13 finding is supported by substantial evidence and was a clear and convincing reason
14 to discount Plaintiff's symptom complaints.

15 3. *Improvement with Treatment*

16 The ALJ found Plaintiff's symptom allegations were inconsistent with
17 Plaintiff's improvement with treatment. Tr. 22-25. The effectiveness of treatment
18 is a relevant factor in determining the severity of a claimant's symptoms. 20
19 C.F.R. §§ 404.1529(c)(3), 416.929(c)(3) (2011); *Warre v. Comm'r of Soc. Sec.*
20 *Admin.*, 439 F.3d 1001, 1006 (9th Cir. 2006) (determining that conditions

1 effectively controlled with medication are not disabling for purposes of
2 determining eligibility for benefits); *Tommasetti v. Astrue*, 533 F.3d 1035, 1040
3 (9th Cir. 2008) (recognizing that a favorable response to treatment can undermine a
4 claimant's complaints of debilitating pain or other severe limitations).

5 First, the ALJ found Plaintiff's cervical impairment improved with surgery.
6 Tr. 21-22. As discussed *supra*, Plaintiff's neck fusion was noted as stable, and he
7 had improvement in his symptoms after surgery. Next, the ALJ found Plaintiff had
8 improvement in his headaches with medication. Tr. 23-24. Plaintiff did not seek
9 any treatment for headaches until late 2016, and after an increase in his medication
10 for the headaches, he did not seek any treatment for headaches for nine months.
11 *Id.* (citing Tr. 881). After the nine-month period when he did not have any
12 appointments related to his headaches, Plaintiff sought treatment when he reported
13 an increase in his headaches due to lapsing in taking his medication; after he restarted
14 medication, he reported the headaches were adequately controlled, and there are no
15 further reports of seeking additional treatment for headaches. Tr. 24 (citing Tr.
16 1139, 1155). On this record, the ALJ reasonably concluded that Plaintiff's
17 impairments when treated were not as limiting as Plaintiff claimed. This finding is
18 supported by substantial evidence and was a clear and convincing reason to
19 discount Plaintiff's symptoms complaints. Plaintiff is not entitled to remand on
20 these grounds.

1 **B. RFC**

2 Plaintiff contends the ALJ's step five finding was based on an improper
3 RFC formulation. ECF No. 24 at 10-12. However, Plaintiff's argument is based
4 entirely on the assumption that the ALJ erred in considering Plaintiff's symptom
5 claims. *Id.* For reasons discussed throughout this decision, the ALJ's
6 consideration of Plaintiff's symptom claims is legally sufficient and supported by
7 substantial evidence.

8 Plaintiff also states the ALJ failed to properly consider the medical opinion
9 evidence when formulating the RFC, ECF No. 24 at 11, however Plaintiff does not
10 set forth any specific challenges to any of the ALJ's rejections of medical opinion
11 evidence. Plaintiff points to Dr. Thompson's testimony as evidence to support his
12 claim he needs a 10-minute break every hour, ECF No. 24 at 8, however Dr.
13 Thompson opined Plaintiff is capable of performing light work with additional
14 limitations, but did not opine Plaintiff needs any breaks in a typical workday, Tr.
15 59-60. Dr. Thompson testified that he does not know if the evidence supports the
16 allegation that Plaintiff needs such breaks, Tr. 61. As such, Dr. Thompson did not
17 opine Plaintiff requires 10-minute breaks every hour. There are multiple other
18 opinions in file, and Plaintiff does not point to any other opinions that indicate
19 Plaintiff needs a 10-minute break every hour. Thus, the ALJ did not err in
20 assessing the RFC or finding Plaintiff capable of performing work existing in the

1 national economy. Plaintiff is not entitled to remand on these grounds.

2 **CONCLUSION**

3 Having reviewed the record and the ALJ's findings, the Court concludes the
4 ALJ's decision is supported by substantial evidence and free of harmful legal error.

5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Plaintiff's Motion for Summary Judgment, **ECF No. 24**, is **DENIED**.

7 2. Defendant's Motion for Summary Judgment, **ECF No. 28**, is
8 **GRANTED**.

9 3. The Clerk's Office shall enter **JUDGMENT** in favor of Defendant.

10 The District Court Executive is directed to file this Order, provide copies to
11 counsel, and **CLOSE THE FILE**.

12 DATED June 30, 2021.

13 s/Mary K. Dimke
14 MARY K. DIMKE
15 UNITED STATES MAGISTRATE JUDGE
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